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PETITION OF

CAVALIER TELEPHONE, LLC

CASE NO. PUC990191

**For arbitration of interconnection
rates, terms and conditions, and
related relief**

HEARING EXAMINER'S RULING

January 19, 2001

By letter dated December 28, 2000, XO Virginia LLC ("XO") requests permission to intervene in the captioned proceeding citing a direct interest in the issues involved in this case.

On January 11, 2001, argument on XO's request to intervene was heard by telephone conference call. Counsel participating were Edward Donohue for XO; Stephen Perkins for Cavalier Telephone, LLC ("Cavalier"); and Lydia Pulley for Verizon Virginia, Inc. ("Verizon"). Mr. Donohue explained that XO is a provider of competitive local exchange services and has held certificates of public convenience and necessity as a competitive local exchange company and interexchange services provider in Virginia.¹ Mr. Donohue argues that the issues identified in the present case have great bearing on XO's ability to provide competitive local exchange services in Virginia.

Ms. Pulley opposed XO's request to intervene. She does not disagree that XO has an interest; however, she argues that XO should more properly intervene in a different proceeding before the Commission. She noted that case No. PUC000026 established a collaborative committee to investigate market opening measures.² Finally, Ms. Pulley argues that Rule 4:7 of the Commission's Rules of Practice and Procedure permits an interested person to intervene in a proceeding commenced by an application, a Rule to Show Cause under Rule 4:11, or by the Commission pursuant to Rule 4:12.

Mr. Perkins states that Cavalier has no objection to XO's request to intervene.

I find that Rule 4:7 does not permit a party to intervene in the pending proceeding. The Rule specifically enumerates the three types of proceedings permitting intervention

¹XO was granted a certificate in July 1998, under the name NEXTLINK Virginia LLC.

²*Ex Parte: Establishment of a Collaborative Committee to Investigate Market Opening Measures*, Case No. PUC000026.

and a petition is not listed among them. The appropriate remedy for XO is to file a separate petition for arbitration.

Howard P. Anderson, Jr.
Hearing Examiner